



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

AUG 13 2007

Stephen Simonton

Cody, WY 82414

RE. MUR 5889

Dear Mr Simonton:

On December 20, 2006, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On July 24, 2007, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe you violated the Act in connection with this matter. Accordingly, the Commission closed its file in this matter as it pertains to you. The Factual and Legal Analysis, explaining the Commission's finding, is enclosed.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Mark Allen, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, reading "Cynthia E. Tompkins".

Cynthia E Tompkins
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT:** Stephen Simonton

MUR: 5889

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7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission by
9 Bill Maers, Campaign Manager for Cubin for Congress. *See* 2 U.S.C. § 437g(a)(1). The
10 complaint alleges that Republicans for Trauner ("RFT"), a committee active in the 2006 general
11 election for U.S. Representative from Wyoming, along with Stephen Simonton (founder of RFT),
12 and J Nichols Patrick (Chairman of RFT), (together, "the Committee"), failed to report
13 electioneering communications, failed to file a statement of organization with the Commission
14 and failed to report receipts and disbursements, all in violation of the Federal Election Campaign
15 Act of 1971, as amended ("the Act"). *See* 2 U.S.C. §§ 434(f), 433(a), and 434(a)(4). The
16 complaint asserts that RFT funded a newspaper advertisement, mailed flyers to 22,000
17 households across the State of Wyoming, and funded and produced radio advertisements. Copies
18 of all three communications were included with the complaint. Each communication explicitly
19 calls for the election of Gary Trauner, the newspaper advertisement and the flyer also explicitly
20 call for the defeat of Representative Cubin.

21 **II. FACTUAL AND LEGAL ANALYSIS**

22 RFT raised \$28,471.00 and spent \$26,622.52 on independent expenditures supporting the
23 election of Gary Trauner, the Democratic candidate, and opposing the re-election of
24 Representative Barbara Cubin, the Republican candidate. RFT initially registered and filed
25 reports with the Wyoming Secretary of State but failed to timely register and report with the
26 Federal Election Commission.

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1 Stephen Simonton filed a response to the complaint, in which he purports to describe the
2 Committee's "intent and actions."¹ Simonton states that the Committee decided to initiate a
3 campaign against the re-election of Representative Cubin after the August 22, 2006 primary
4 election. The Committee "checked with a friend who is familiar with state-wide campaigns, as
5 she has been involved in several and was responsible for filing reports in those campaigns."
6 Simonton states that this friend did not know, and the Committee did not figure out in a timely
7 manner, that because Representative Cubin was a federal candidate, RFT was subject to federal
8 filing requirements as well as state filing requirements.

9 Simonton asserts that before beginning RFT's activity, the Committee properly filed a
10 Statement of Formation by Political Action Committee with the Secretary of State for the State of
11 Wyoming on September 9, 2006. The Committee subsequently filed Statements of Receipts and
12 Expenditures with the State of Wyoming on October 27, 2006 and on November 15, 2006.
13 Simonton's response contains copies of all three filings. According to Simonton, the Committee
14 was not aware of its obligation to file with the Commission until November 1, 2006, when
15 Simonton learned through a newspaper reporter that RFT might also need to file with the
16 Commission. Simonton further recounts that the Committee "quickly checked and discovered
17 that the reporter was correct." Simonton response at 2. On that same day, Simonton asserts, the
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¹ Public information indicates that Simonton is an attorney located in Cody, Wyoming, with a very limited record of contributions in connection with federal elections. Commission records indicate that Simonton donated \$1,700 to RFT and \$300 to Trauner for Congress but to no other committees during the 2006 election cycle. In press articles regarding RFT, Simonton is the sole individual reportedly speaking on behalf of RFT. See, e.g., Richard Reeder, *Lawyer Launches Anti-Cubin 'Republicans for Trauner,'* CODY ENTERPRISE, September 25, 2006.

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1 Committee called and spoke with "one of the FEC personnel at the toll free number of the
2 Federal Election Commission." *Id.* With assistance from the Commission personnel, Simonton
3 recounts, RFT prepared a Statement of Organization and sent it by overnight delivery to the
4 Commission. The next day, November 2, 2006, RFT filed by overnight mail Form 5, disclosing
5 RFT's contributions received and independent expenditures made through October 31, 2006.

6 RFT later timely filed a Post-General Election Report with the Commission

7 Finally, Simonton asserts that RFT was "totally independent of Mr. Trauner's campaign
8 and organization." Simonton response at 1. According to a press article, Simonton
9 acknowledged speaking with Trauner about issues but states that he "never asked Trauner's
10 permission or told him he was out doing anything for him." Trauner reportedly stated that he
11 was pleased to have RFT's support but that RFT carried out its activity "without any real input"
12 from Trauner's campaign and that Simonton "didn't tell him what [Simonton's] plan was."

13 *Trauner Nets Unlikely Ally*, WYOMING TRIBUNE-EAGLE, October 7, 2006

14 The complaint named Stephen Simonton as the RFT founder. The available information,
15 however, does not suggest personal liability as to him. Accordingly, there is no reason to believe
16 that Stephen Simonton violated the Act in connection with this matter

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